



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the Legislative Task Force on Demographic Research and
Reapportionment (LATFOR)
On the Proposed State Legislative Lines for 2012
February 2, 2012

Good morning members of LATFOR. My name is Alex Camarda, and I am the Director of Public Policy and Advocacy at Citizens Union. I'm joined by Rachael Fauss, our Policy and Research Manager. Citizens Union of the City of New York is an independent, non-partisan, civic organization of New Yorkers who attempts to make democracy work for all New Yorkers, promotes good government and advances political reform in our city and state.

On Monday Citizens Union testified before you in Albany. We stated in our testimony then, and continue to believe upon further analysis, that the primary motivation in drawing these proposed maps was to maximize the power of the majority parties in each house. We are not surprised by this outcome, and believe it to be the inevitable consequence of a process that is rife with conflicts of interest and should have been reformed when there was still time to do so. 184 legislators pledged in different forms to create an independent commission in 2010 and 2011, and they failed to keep their word to the people of New York.

Earlier this week, we pointed out in our previous testimony¹ how the proposed maps all too often divided political subdivisions such as cities and counties and created many districts that were not even close to being compact, violating the spirit if not the letter of the state constitution.

Our testimony today looks at the maps according to other recognized redistricting criteria, finding that LATFOR has failed to live up to the principles of legislation supported by 184 legislators in the following areas:

- 1. The allowable population deviation between state legislative districts is manipulated to enable the Senate Republicans to create an additional seat upstate and by the Assembly Democrats to add a seat downstate.** There is a distinct partisan pattern in the under and overpopulating of districts. Generally districts held or envisioned to be held by majority incumbents are underpopulated and districts thought to be won by the minority are

¹ Available at:

http://www.citizensunion.org/www/cu/site/hosting/Testimony/1_30_12_CU_Testimony_LATFOR_Maps.pdf

overpopulated. This enables the majority parties – whether it be the Assembly Democrats or Senate Republicans – to create an extra district in an area of the state that is politically favorable to maintaining the majority’s power. Citizens Union calls on the mapmakers to draw maps that better reflect communities of interest and maintain the integrity of political subdivisions, and not manipulate the flexibility provided in federal case precedent for strictly political advantage.

- 2. The New York State legislature does not currently reflect the diversity of the state’s population as well as it should, and our testimony provides further analysis of whether districts are drawn in such a manner to promote a diverse legislature representative and adhere to the Voting Rights Act.** Citizens Union acknowledges that LATFOR has created more opportunities to elect Asian Americans but further improvements need to be made. Latinos remain underrepresented both in the state legislature and in the New York City delegation in both houses. While African Americans are, in the totality of circumstances, well represented relative to their population in the state, there are instances in which communities in which they are the majority of the population are deliberately cracked as is the case in Long Island. It is blatantly partisan to focus nearly all efforts in the Senate to create possible new districts that bring diversity by placing them in New York City and then ignore suburban areas like Long Island that provide for similar opportunities to create more diverse elected representation.

In order to address these concerns, Citizens Union calls on LATFOR to:

1. Create more equally sized districts in order to ensure that the state is not regionally underrepresented in either house of the legislature, and to eliminate partisan advantage.
2. Build on its improvements in creating opportunity to elect districts for Asian Americans and draw districts that enhance diversity even when it is not politically convenient to do so.
3. Make efforts to create more opportunities to elect Latino legislators in the Assembly in New York City.
4. Draw districts in Long Island that keep minority communities whole and provide opportunities for minorities to elect candidates of their choice irrespective of whether it is legally required under the Voting Rights Act.

While our testimony has been critical of LATFOR maps, we do appreciate that LATFOR is holding these hearings, listening to the concerns of those testifying, and is amenable to changing the maps. We hope LATFOR – or whatever added process can be reasonably established to accomplish reform – makes sweeping changes to these draft plans, exceeds everyone’s expectations and makes the governor’s veto unnecessary.

Otherwise, we will continue to call upon the Governor to veto lines drawn in such a partisan manner as these.

Rachael Fauss will discuss our analysis of the population deviations between districts.

I. Partisan Use of Allowed Population Deviation

Much leeway is allowed under federal case precedent regarding the size of districts, amounting to a difference or “deviation” of as much as 5 percent from the average size district. This is a powerful tool which has been used for partisan advantage. For a senate districts, this means that the largest and smallest senate district can differ by nearly 31,000 people, and Assembly districts by about 13,000 people. Though 184 legislators in 2011 supported criteria that would dramatically lower the allowed deviation to 1 percent, no reforms were enacted, and we see today the continued reliance by LATFOR on this deviation for partisan gain. Further, as shown by the New York Public Interest Research Group, LATFOR’s reliance on the larger deviations has increased under the proposed maps for the Senate. The number of districts over 3 percent from the average size increased to 50 in 2012 from 19 in 2002 for the Senate. While all but one of the Assembly’s districts are under a 4 percent deviation and the average deviation commendably dropped a bit from 2.67% in 2002 to 2.56% in 2012, few live up to the standard supported by 184 legislators of within 1 percent of the average – only 26 of the 150 districts in the Assembly do so. Below is a summary of the average absolute deviation (the overall difference from the average district size) in 2002 versus 2012 for the Assembly and Senate.

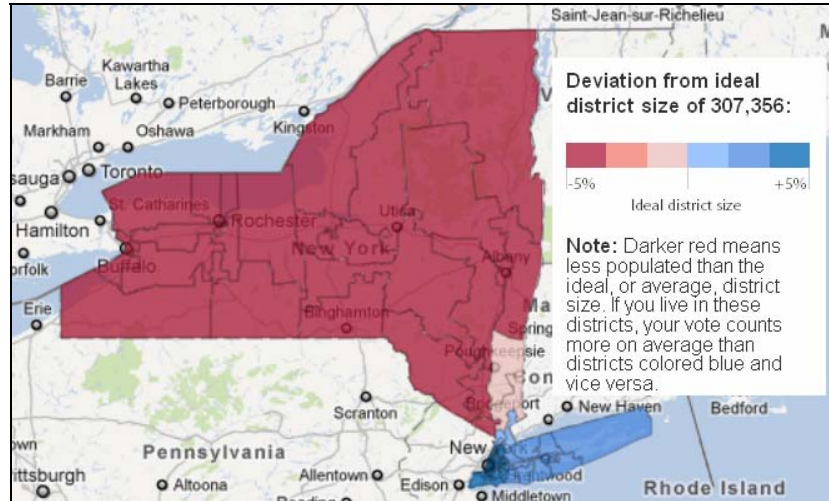
AVERAGE ABSOLUTE DEVIATION 2002 AND 2012 REDISTRICTING CYCLES		
Cycle	Assembly	Senate
2002	2.67%	2.30%
2012	2.56%	3.67%

Regional Deviation

As shown in Citizens Union’s November 2011 comprehensive redistricting report², past redistricting plans have had large regional deviations, underpopulating upstate New York in the State Senate to maximize Republican strength while overpopulating downstate to minimize Democratic strength, with the opposite true for the Assembly, with upstate New York overpopulated and downstate underpopulated in order to maximize Democratic strength overall. Again, under the proposed 2012 maps, we see

² Citizens Union. “ReShaping New York: Ending the Rigged Process of Partisan Gerrymandering with an Impartial and Independent Redistricting Process.” November 2011. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_ReshapingNewYork_November2011.pdf

the same trends. Below is a map of senate deviations showing the regional overpopulation of downstate New York developed by the New York World, a project of Columbia Journalism School.³



In both cases for the Assembly and Senate, this regional deviation has again been used for partisan advantage, advantaging the majority party in power in each house. For the State Senate, this regional deviation amounts to a total of 389,596 additional people in proposed districts 1 through 37 downstate (Long Island to lower Westchester), an average deviation of +3.16 percent, and 355,448 fewer people in districts 28 to 63 upstate, (Upper Westchester and Rockland County, all the way to the North Country and Buffalo), with an average deviation of -4.45 percent. This population is more than the size of a Senate seat (approx. 310,000), and presumably was done in conjunction with the creation of the 63rd senate district.

As stated previously, the Assembly does the reverse of the Senate, with districts generally underpopulated downstate. Proposed districts 1 through 87 (Long Island through the Bronx) have 198,059 fewer people, with an average deviation of -1.67 percent, and districts 88 through 150 upstate (Westchester and Rockland Counties all the way to the North Country and Buffalo) have 198,106 additional people and an average deviation of +2.44 percent. This population is more than the size of an average assembly seat (approx. 130,000). Overall, this has meant the inclusion of an additional district in Long Island at the expense of upstate New York, beyond what population alone would indicate. It should be noted for the Assembly, however, that there are exceptions. New York County has an average deviation higher than the rest of downstate at about +2.6 percent, perhaps due to block-on-border rules of the State Constitution, while the rest of downstate is underpopulated. Additionally, proposed

³ Chavkin, Sasha and Keller, Michael. The New York World. Developed using LATFOR data and maps from the Center for Urban Research, CUNY. Available at: <http://www.thenewyorkworld.com/public/2012/jan/redistricting-proposal/index-expand.html>

assembly districts 95 and 104 are underpopulated. District 104 is similar to current district 100, which was held by former Assemblymember Tom Kirwan, a Republican. District 95 is similar to current district 90, which is represented by Sandy Galef, but now lacks the town of Putnam Valley.

Majority and Minority Incumbents and Deviation

Citizens Union also examined the use of population deviation as it related to majority and minority legislators in the New York State Senate. Again, we note a partisan trend toward maximizing the majority in power. We were unable to do this analysis for incumbents in the State Assembly, as we were not able to obtain a listing of incumbent legislators in the new districts in time for this hearing. We will, however, send LATFOR this analysis once we have this data.

For the State Senate, in general, nearly all downstate incumbent Democrats (23), the minority in the Senate, were placed in districts that were overpopulated, consistent with the regional deviations described above. The only Democratic senators in underpopulated districts were outside of New York City and Long Island – Senators Carlucci, Valesky, Breslin, and Kennedy. This may be due to the town-on-border rules of the State Constitution, which necessitate nearly equal adjacent districts. For the majority party, the Republicans, their districts were nearly always underpopulated, but for all Republican Senators on Long Island again likely because of town and block-on-border rules, and Senators Lanza and Golden in New York City.

STATE SENATE DISTRICT DEVIATIONS		
Deviation	Minority Party: Incumbent Democrats	Majority Party: Incumbent Republicans
District Larger than Average, +3% to +5%	23	2
Districts Larger than Average, +1 to +3%	0	9
Districts Larger than Average, 0 to +1%	2	0
Districts Smaller than Average, 0 to -1%	0	1
Districts Smaller than Average, -1 to -3%	0	1
District Larger than Average, -3% to -5%	4	19

Use of Deviations and Voting Patterns

Citizens Union also analyzed voting patterns⁴ from the 2008 Presidential Election in order to see if population deviation was used on a partisan basis in both houses of the legislature. As expected, the deviation was used to maximize Democratic votes for assembly seats, and maximize Republican votes for senate seats. In both cases, the minority parties in each house lose out.

PROPOSED ASSEMBLY DISTRICT VOTING TRENDS AND DEVIATIONS		
Past Voting	Population difference from Average	Average Deviation
Proposed districts that voted for Barack Obama (+50%)	-45,732 (Underpopulated)	-0.30%
Proposed districts that voted for John McCain (+50%)	+45,779 (Overpopulated)	+1.18%
<i>John McCain 40% or more</i>	+97,793 (Overpopulated)	+1.05%

PROPOSED SENATE DISTRICT VOTING TRENDS AND DEVIATIONS		
Past Voting	Population difference from Average	Average Deviation
Proposed districts that voted for Barack Obama (+50%)	+19,952 (Overpopulated)	+1.12%
Proposed districts that voted for John McCain (+50%)	-19,983 (Underpopulated)	-1.26%
<i>John McCain 40% or more</i>	-196,717 (Underpopulated)	-1.73%

Alex Camarda will now discuss how redistricting impacts the ethnic and racial diversity of the legislature.

II. Redistricting and Diversifying the Legislature

New York State’s legislature is not nearly as diverse as the people it represents. As indicated on the chart on the next page, while 75 percent of legislators are white, the white population in New York State is just 58 percent. While 18 percent of the state’s population is Hispanic or Latino, only 9 percent of the legislature’s members are

⁴ Data from Reinvent Albany, available at: <http://reinventalbany.org/2012/01/demographics-of-proposed-senate-districts/>, using LATFOR data. Note that data was extrapolated in the Senate for votes to John McCain, given that data was only provided for votes to Barack Obama.

Hispanic or Latino. The Asian American population is 15 times greater than the proportion of legislators of Asian American descent. In total, minority legislators represent just 25 percent of state legislative seats, yet minorities are 42 percent of the state's population.

Ethnic/Racial Composition of the New York State Legislature, February 2012⁵

Group	Legislators	Percent of State Legislature	Percent of Total Population	Percent Difference
White, Non-Hispanic	158	74.53%	58.3%	+16.70%
Black or African American, Non-Hispanic	33	15.57%	14.4%	+1.17%
Hispanic or Latino	20	9.43%	17.6%	-8.17%
Asian American	1	0.47%	7.3%	-6.83%
Native American	0	0.00%	0.3%	-0.30%

For vacant seats, the legislator last occupying the office was counted for the purposes of totaling the number of legislators in each ethnic/racial group.

The New York City delegation, while much more reflective of its residents than the legislature as a whole, has only one Asian American legislator and the proportion of Latinos in the population significantly exceeds that in the Assembly delegation. This is shown on the charts below:

**Ethnic/ Racial Composition of the New York State Assembly 2012
 (for NYC Assembly Districts)**

Group	Legislators	Percent of NYC Delegation	Percent of Total Population	Percent Difference
White, Non-Hispanic	36	55.38%	44.00%	11.38%
Black or African American, Non-Hispanic	16	24.62%	25.50%	-0.88%
Hispanic or Latino	12	18.46%	28.60%	-10.14%
Asian American	1	1.54%	12.70%	-11.16%
Native American	0	0.00%	0.70%	-0.70%

⁵ All population data based on U.S. Census Bureau American 2010 Census. Data on minority elected officials based on Citizens Union's compilation of data from the National Conference of State Legislators (Legislator Demographics); review of Asian-American legislative succession; and the review of races watched by the National Association of Latino Elected Officials (NALEO).

**Ethnic/ Racial Composition of the New York State Senate 2012
(for NYC Senate Districts)**

Group	Legislators	Percent of NYC Delegation	Percent of Total Population	Percent Difference
White, Non-Hispanic	12	46.15%	44.00%	2.15%
Black or African American, Non-Hispanic	8	30.77%	25.50%	5.27%
Hispanic or Latino	6	23.08%	28.60%	-5.52%
Asian American	0	0.00%	12.70%	-12.70%
Native American	0	0.00%	0.70%	-0.70%

For vacant seats, the legislator last occupying the office was counted for the purposes of totaling the number of legislators in each ethnic/racial group.

Partisan redistricting is a major reason New York State has a legislative body that looks significantly different than the demographics of the state. Because lines are drawn to retain majority power and preserve the seats of incumbent legislators, the state legislature is constantly stuck in the past, slow to adapt to changing demographic trends.

While Citizens Union believes that a legislator of one race is certainly capable of representing constituents of a different race, the state’s legislature as a whole ought to more closely reflect the state’s demography than it does now.

Protections in federal law can have the effect of making the legislature more diverse. As part of the redistricting process, the legislature is required to follow the federal Voting Rights Act. Both section 2 and 5 of the Voting Rights Act provide protections for minorities from having their votes diluted. Section 2 prohibits state and local governments from adopting redistricting plans in which minorities, “have less opportunity than other members of the electorate to participate in the political process and elect a member of their choice.”⁶ Section 5 requires the Bronx, Kings (commonly known as Brooklyn) and New York (Manhattan) counties to obtain pre-clearance from the United States Department of Justice before changing any legislative districts boundaries. Districts in these covered jurisdictions cannot adopt voting changes with a discriminatory purpose or retrogressive effect, meaning it makes it more difficult for minorities to vote for a candidate of their choice than if the change did not occur.⁷

While the Voting Rights Act does provide protections for minorities from having their vote diluted by being compressed into a small number of districts (packing), or spread thinly among various districts (cracking), proving discrimination is a high bar with

⁶ See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (2009).

⁷ NAACP, 17.

several threshold tests. However, the line-drawers have discretion in drawing lines that promote opportunities for minority representation particularly when minority groups in a particular area do not clearly vote as a cohesive unit or when one minority group does not comprise a majority of a district.

Pertaining to the proposed maps, the critical question is did mapmakers use their line-drawing discretion to promote minority representation or did they instead prioritize their own partisan interests?

Asian American Representation in New York City

As indicated in Table 1 on p. 5, Asian Americans currently hold just one seat in the Assembly and none in the State Senate despite being 7.3 percent of the state's population and 13 percent of the city's population. LATFOR to their credit in New York City created a senate district in Queens (senate district 16) that will enable Asian Americans to elect a member of their choice. The Assembly also drew two new Asian American opportunity to elect districts (49 in Bensonhurst and Sunset Park & 25 in Flushing and Bayside) while retaining under a new district number (40) the current assembly district in Flushing that has elected the only Asian American legislator in the state's history. While this marks a much needed improvement that should result in a greater Asian American presence in the legislature, even with four Asian American legislators possibly elected under this draft plan, it would only result in 1.8 percent of the legislature being Asian American.

We therefore urge LATFOR to do more to increase Asian American representation and electoral influence. We agree with the Asian American Community Coalition on Redistricting (ACCORD) which includes our ReShapeNY partners, Minkwon Center for Community Action and the Korean Americans for Political Advancement (KAPA), that another Asian American assembly district could be created in Elmhurst and the South Asian community in Richmond Hill-South Ozone Park community should be kept whole. The newly created senate district 16 should also be made more compact. Creating an opportunity-to-elect district for Asian Americans need not conflict with the constitutional requirement that districts be as compact as is practicable. Indeed keeping Flushing whole would serve both purposes.

In short, Citizens Union commends LATFOR for making districts in NYC that will likely result in greater Asian American representation in both the Assembly and Senate, but more districts can be made and proposed districts can be made more compact.

Increasing Latino Representation

While 18 percent of the state's population is Hispanic or Latino, only 9 percent of the legislature's members are Hispanic or Latino. There are 6 Hispanic or Latino legislators, or 23 percent, among the NYC delegation in the state senate, 6 percent less than the Hispanic population in New York City. The Assembly has 12 Hispanic or Latino

legislators, or 18 percent of the New York City delegation in the assembly, 11 percent less than the Hispanic population in New York City. **Citizens Union therefore recommends that efforts be made to create more opportunities to elect Latino legislators in the Assembly.**

Citizens Union suggests looking specifically at the newly created adjacent assembly districts 38 (which has a Latino Voting Age Population of 47.4 percent), 37 (which has a Latino Voting Age Population of 35.78 percent), and 30 (which has a Latino Voting Age Population of 25.18 percent) to determine if a district could be created with a Latino Voting Age Population that would exceed 50 percent. All three districts are represented by white incumbents.

Cracking Minority Communities in Long Island

Turning to Long Island, mapmakers have deliberately made a conscious choice to put their own partisan interests above drawing districts that keep minority communities intact. It is an open question for these proposed maps whether choosing political concerns over minority representation is legal. But there is no question it is an undoubtedly wrong.

The imperative to create opportunities for minority representation in Long Island is indisputable. The decades-long incumbent and party protection plan in Long Island creates a legislative conference that does not remotely reflect the diversity of residents of Long Island. Gerrymandering protects incumbents who are disproportionately white males and prevents Long Island from reflecting its present diversity.

Every single Long Island state senate district is represented by a white male. Yet while Long Island's population is 77 percent white, 16 percent is Hispanic, 9 percent is African American, 5 percent is Asian American, and 3 percent is multiracial, not to mention the lack of representation for the female population. In short, the minority population in Long Island is 33 percent. Zero percent of the senate delegation from Long Island are minorities.

This disparity in the Senate did not occur by chance but was a deliberate choice by mapmakers who have for decades drawn districts in Long Island that have cracked concentrations of minority communities. The proposed LATFOR senate maps are no different than past practice in this regard.

In Nassau County, senate districts 6, 8 and 9 divide a stretch of communities (stretching from Lakeview and West Hempstead to Uniondale running southward to Baldwin Harbor and Freeport) in which African American and Hispanic residents are the majority or a significant minority of the population. The division between senate district 9 and 7 likewise divides Valley Stream and North Valley Stream from Elmont and South Flora Park, another concentration of minority voters that exceeds 50 percent in virtually all of

the aforementioned localities (see attached map entitled “2010 Black+Hispanic Population % with Proposed 2012 Senate Districts- Nassau County detail (Jan. 2012)”.

Several senate districts in Long Island in Suffolk County also split black and Hispanic communities. The proposed senate districts 4 and 8 splits several census-designated population centers in the Town of Babylon with combined Black and Hispanic population of over 67 percent, including of Wheatley Heights and Wyandanch. Proposed Senate Districts 4 and 3 splits a population center within the town of Islip, Brentwood, which has a combined Black and Hispanic population over 67 percent. (See attached map entitled “2010 Black+Hispanic Population % with Proposed 2012 Senate Districts- Suffolk County detail, Jan. 2012.”)

Citizens Union calls on LATFOR to draw districts in Long Island that keep minority communities whole and provide opportunities for minorities to elect candidates of their choice irrespective of whether it is legally required under the Voting Rights Act. It is simply the right thing to do given that the legislature that does not reflect the demography of the state as well as it should, and the Long Island senate delegation, while arguably capable and hard-working, does not reflect the changing demographics in Nassau and Suffolk counties and its lack of diversity does not help to inspire a sense of belonging or inclusion of the area’s minorities.

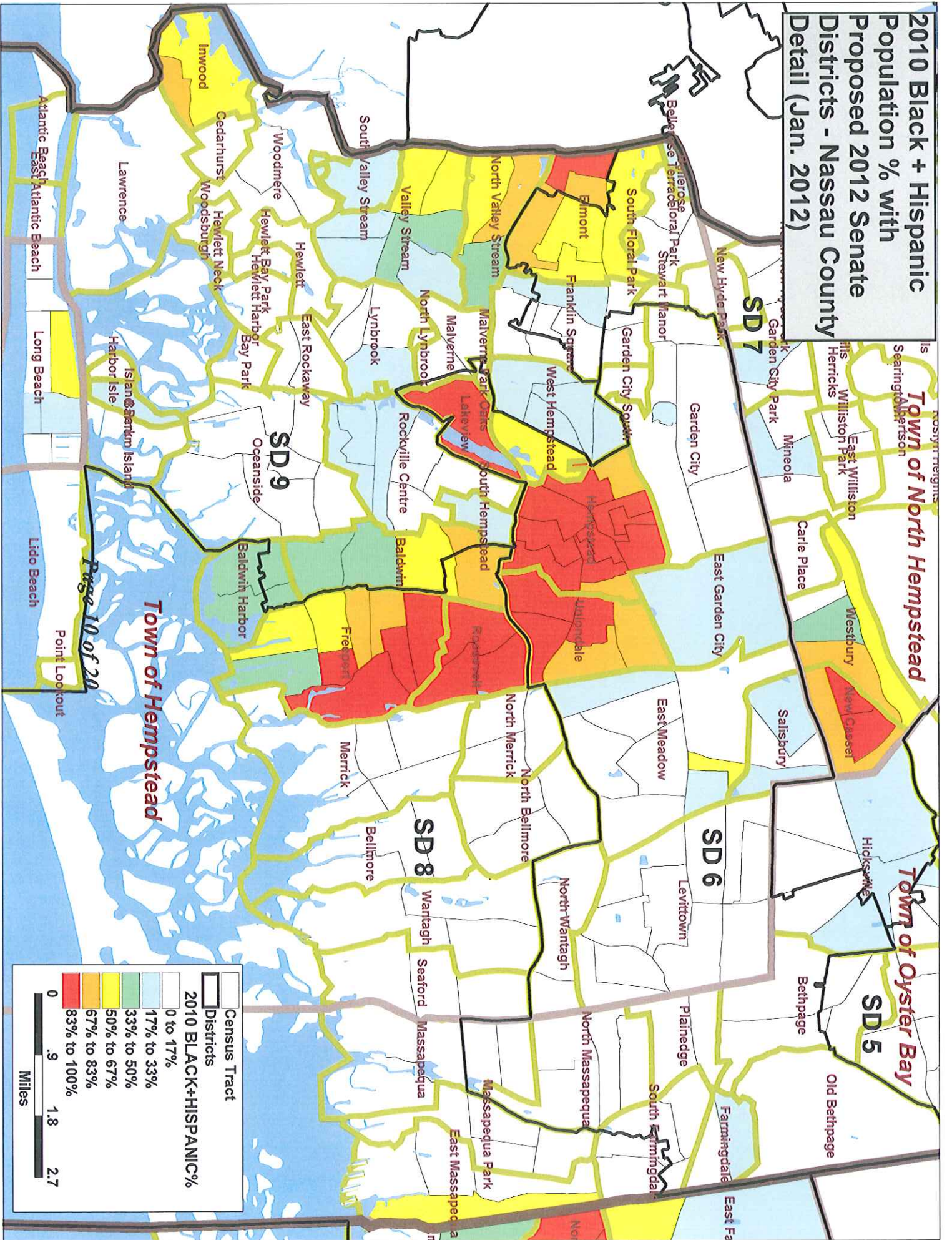
Conclusion

We thank you for giving us the opportunity to provide testimony today. This concludes the feedback Citizens Union will provide on the proposed maps.

We again call on these maps to be dramatically improved to avoid a gubernatorial veto, through whatever impartial process can be achieved in the remaining time, and note the need to end once and for all the incumbent protected partisan gerrymandered maps that the 2012 maps present and for a permanent independent process to remove the conflict of interest that occurs when legislators draw their own lines.

We welcome any questions you may have.

**2010 Black + Hispanic
Population % with
Proposed 2012 Senate
Districts - Nassau County
Detail (Jan. 2012)**



	Census Tract
	Districts
	0 to 17%
	17% to 33%
	33% to 50%
	50% to 67%
	67% to 83%
	83% to 100%

2010 BLACK+HISPANIC%

0 .9 1.8 2.7
Miles